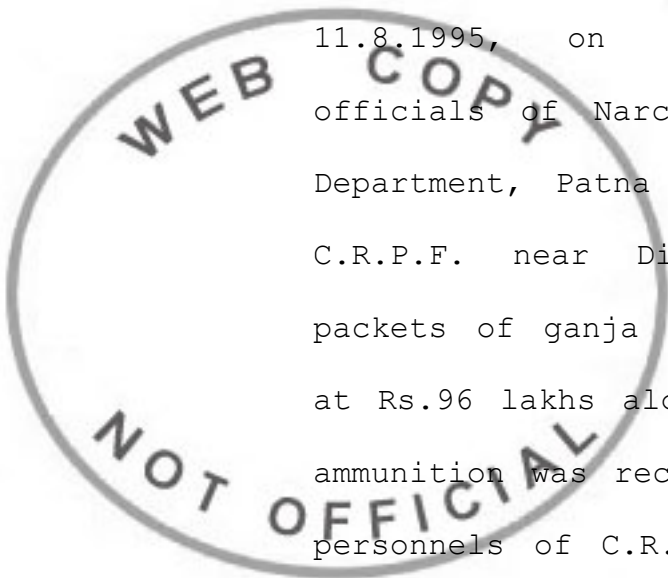


IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.602 of 2007
UNION OF INDIA THRU. CRPF 61 B.N.
Versus
UNION OF INDIA THRU.CENTRAL EX

6. 16.9.2008. This revision has been preferred against the order dated 12.6.2006 passed by Additional Sessions Judge-XII, Patna in Special Case No.26 of 1995 whereby the prayer for release of the seized vehicle has been rejected.

Heard the learned counsel for both the parties.

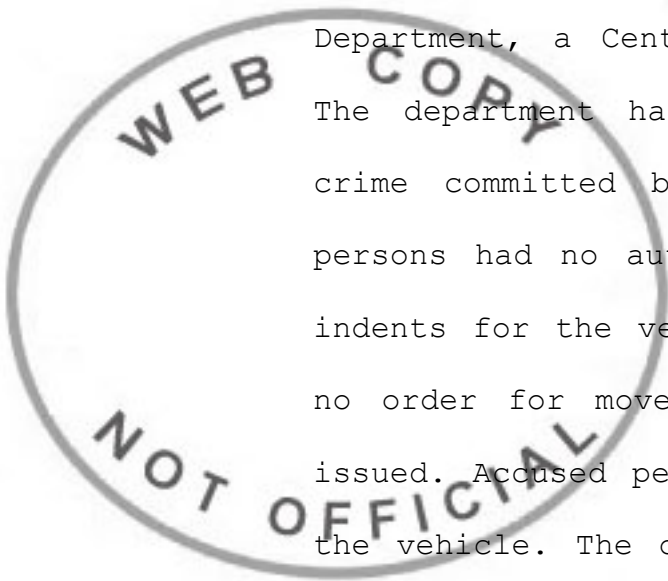
It appears from the record that on 11.8.1995, on secret information, the officials of Narcotic Cell, Central Excise Department, Patna intercepted two trucks of C.R.P.F. near Didarganj. On search, 430 packets of ganja weighing 3200 kgs. valued at Rs.96 lakhs along with cache of arms and ammunition was recovered from the trucks. 12 personnels of C.R.P.F. were arrested at the spot. Ganja along with two trucks bearing no.DL-IO-6598 and DIL-1704 were seized by the Excise Department. After investigation, the Excise Department filed prosecution report against 32 persons of C.R.P.F. including



I.G.P. Shri M.K. Tiwary. Arms and ammunitions were released in favour of the C.R.P.F.

Before the trial court, the Commandant of 61 BN CRPF, Ajmer filed a petition for release of the vehicles under section 451 Cr.P.C. The same was ultimately rejected by the impugned order. Against that order, revision has been filed by Additional D.I.G.P.(Adm.), Bihar Sector, CRPF, Patna.

It is submitted by the learned counsel for the petitioner that the vehicles in question are vehicles of the CRPF Department, a Central government department. The department has nothing to do with the crime committed by its personnels. Accused persons had no authority to carry ganja. No indents for the vehicles had been issued and no order for movement of vehicles had been issued. Accused persons are not the owner of the vehicle. The department had no knowledge of the misuse of the vehicle for the purpose of carrying illicit ganja. It is further submitted that both vehicles are rotting uncared in police station premises and, therefore, in the interest of justice the



same may be released in favour of the petitioner. In support of the contention, the learned counsel for the petitioner relied upon a decision of the apex court reported in 2003(4) PLJR 244.

On the other hand, learned counsel for the opposite party vehemently opposed the prayer for release of the vehicle and submitted that keeping in view provisions for confiscation of the vehicles in N.D.P.S. Act, it would not be proper to release the vehicles. It is further submitted that the case is very serious in nature. The quantity of ganja was also huge which is 32 quintals. In support of his contention, he has referred to sections 60 to 63 of the N.D.P.S. Act as well as a decision of the apex court reported in 2005(9) SCC 330.

It is needless to say that section 60 of the N.D.P.S. Act provides for confiscation of seized materials including Narcotic Drugs Substance, apparatus, utensils etc. used in commission of offence. Section 63 lays down procedure for confiscation of seized material. The trucks sought to be

released were used by the accused persons for carrying ganja and, therefore, under law, they are liable to be confiscated by the court.

There are catena of decisions including decision referred to above by the petitioner that inspite of provisions of confiscation made in N.D.P.S. Act the court can pass interim order for release of the vehicles under section 451 or 457 of Cr.P.C. However, it depends upon nature of case as well facts and circumstances. The case in hand appears to be serious in nature. The CRPF personnels in garb of uniform used department's vehicles for smuggling of contraband ganja in huge quantity. The case is of the year 1995 and trial is going on. The vehicles being used in commission of crime are naturally required during trial and also after end of trial for confiscation. Therefore, at this stage release of vehicles would not be proper.

The decision cited by the learned counsel for the opposite party reported in 2005 SCC does not lay down any law. However, it goes to show that in cases under N.D.P.S.

Act release of vehicles is not a matter of routine. The apex court in above decision has set aside the order of High Court regarding release of vehicle and directed the respondent to surrender the vehicle. In short order, the apex court in paragraph-3 has observed as follows :

"3. By the impugned order, the High Court has directed for release of the vehicle during trial of the accused for violation of the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act). In our view, in the facts and circumstances of the present case, the High Court was not justified in releasing the vehicle."

The last but not the list important factor is right of the present petitioner to file this revision against the order of the lower court. The Commandant of CRPF 61 BN (through R.P. Purohit), Ajmer filed a

petition for release of the vehicle before the lower court. But this revision petition has not been filed by the Commandant of CRPF, Ajmer. It has been filed by another authority, namely, Additional DIGP, CRPF, Patna. Obviously this petitioner has no authority to prefer this revision.

Thus, having regard to the facts and circumstances of the case as well as the law mentioned above, this court is not inclined to release the vehicles in favour of the petitioner.

Accordingly, this application is rejected.

(Ghanshyam Prasad)

N.H./

